

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 RAYMOND BLVD. NEWARK 2, N. J.

BULLETIN 1401

August 17, 1961

1. APPELLATE DECISIONS - PACKARD-BAMBERGER & CO., INC. v. TOWNSHIP OF MADISON (MIDDLESEX COUNTY).

PACKARD-BAMBERGER & CO., INC.,)	
Appellant,)	
v.	)	ON APPEAL.
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP	)	AND ORDER
OF MADISON (MIDDLESEX COUNTY),)	
Respondent.)	

Charles P. DeYoe, Esq., Attorney for Appellant.
Harold G. Smith, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellant appeals from the action of respondent on March 20, 1961, whereby it denied an application for the transfer of a plenary retail consumption license from Pratt Liquors Inc. to appellant and from premises at Pratt Avenue and Route 35 to Store #2, Browntown Shopping Center, Route 18, Madison Township.

"Respondent's resolution denying said application sets forth that it was denied 'because it does not conform with the existing Ordinance in the Township of Madison calling for 2,000 feet between the locations of liquor dispensing stores.' No other issue was raised in the pleadings or referred to at the hearing held herein.

"The events which preceded the filing of the appeal will be set forth herein in chronological order.

"On June 20, 1960, respondent adopted a resolution approving a transfer of a plenary retail consumption license from Charles Seddon to Bilow Inc. and from premises at 795 Summerfield Avenue to premises on Route 18, near its intersection with Gaub Road. The fact is that at that time there was no building at the location to which said transfer was sought. Plans for a building proposed to be constructed at the location had, apparently, been filed with said application. From the evidence herein it appears that the proposed building was being erected but had not been completed on May 4, 1961, the date of hearing herein.

"Effective July 1, 1960, respondent renewed (for the 1960-61 licensing year) the license held by Charles Seddon for 795 Summerfield Avenue.

"On July 11, 1960, respondent adopted a new ordinance, the pertinent portion of which is as follows:

'Section 1. No new license or transfers of existing Plenary Retail Distribution Licenses, Plenary Retail Consumption Licenses, Seasonal Consumption Licenses or Limited Distribution Licenses for the sale of alcoholic beverages shall hereafter be issued for or transferred

to premises within two thousand (2,000) feet of premises for which a Plenary Retail Distribution License, Plenary Retail Consumption License, Seasonal Consumption License or Limited Distribution License for the sale of alcoholic beverages is outstanding, provided, however, that this limitation shall not prevent the renewal or person to person transfer of a license for premises licensed when this Ordinance becomes effective. Nothing herein contained shall be deemed to prevent transfer of a license to within seven hundred fifty (750) feet of the premises licensed at the time of the adoption of this Ordinance.'

"On August 8, 1960, respondent, as a result of correspondence with this Division, adopted a resolution reciting that

'*** a resolution of June 20, 1960 purporting to transfer 1960-1961 License C-21 from Charles Seddon to Bilow Inc., and from place to place, is hereby amended to provide that the application of Bilow Inc., is granted, as of June 20, 1960, subject to the special condition that there shall be no person-to-person or place-to-place transfer of the license unless and until the proposed new premises are first duly completed in keeping with the filed and approved plans and specifications***.'

"On January 9, 1961, appellant filed its application for transfer which is the subject of this appeal.

"By letter dated January 18, 1961, Benjamin Kleinberg, Esq., Attorney for Bilow Inc., filed with respondent a written objection to appellant's application and on February 6, 1961, respondent held a public hearing thereon. Attorneys representing appellant, Pratt Liquors Inc., Browntown Shopping Center and Bilow Inc. presented arguments at said hearing as to the effect upon appellant's application of the ordinance adopted by respondent on July 11, 1960. On March 20, 1961, respondent adopted the resolution denying appellant's applicat

"The evidence herein discloses that the proposed licensed premises of appellant are located 1,075 feet from the proposed licensed premises of Bilow Inc. Hence it is necessary to determine whether on March 20, 1961, Bilow Inc. was the holder of an outstanding license for its proposed premises. Although respondent's amending resolution of August 8, 1960, purports to grant a transfer of the 1960-61 license from Charles Seddon to Bilow Inc. and from place to place, the license has never been 'actually transferred on its face' to Bilow Inc. and its premises. Re Volcker, Bulletin 140, Item 9. In fact, the amending resolution recites that the transfer is granted 'subject to the special condition that there shall be no person-to-person or place-to-place transfer of the license unless and until the proposed new premises are first duly completed in keeping with the filed and approved plans and specifications.' Charles Seddon obtained a renewal of said license for the 1960-61 licensing year for 795 Summerfield Avenue. This case is somewhat similar in its facts to the facts in Monroe Tavern, Inc. v. Elizabeth et al., Bulletin 1022, Item 3. Therein it was held that, where a licensee lost possession of his licensed premises, said premises were not 'existing licensed premises' within the meaning of a local regulation fixing a minimum required distance between licensed premises. I conclude that the action of respondent whereby it denied appellant's application for a transfer was erroneous.

"Question as to whether ordinance of July 11, 1960, was reasonable as it applied to appellant was not raised herein. Bilow Inc. was not

a party to this appeal and, hence, its right to a transfer after its premises are completed need not be considered at this time. However, in my opinion there is serious question as to whether said ordinance is reasonable in itself or insofar as it applies to either appellant or Bilow Inc. Re The Great Atlantic & Pacific Tea Company, Bulletin 1092, Item 1; Shenise v. Jefferson, Bulletin 1155, Item 2.

"For the reasons aforesaid, it is recommended that an order be entered herein reversing respondent's action and directing respondent to transfer the license in accordance with appellant's application."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the evidence, exhibits and oral argument presented at the hearing, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

I may without impropriety suggest here that the Township Committee may move, in all fairness, to adoption of an ordinance amending or supplementing the distance ordinance so as to provide an exception therefrom (Re Bilow, Inc.) in favor of applications granted prior to adoption of the distance measure.

Accordingly, it is, on this 7th day of June 1961,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to grant the transfer of the license in accordance with appellant's application.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION et al. v. TEANECK AND PANZENHAGEN (CASE NO. 2).

Case No. 2)	
HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, and CALLAHAN & DONOHUE WINE & LIQUOR,)	
)	
Appellants,	)	ON APPEAL ORDER
)	
v.)	
)	
TOWNSHIP COUNCIL OF THE TOWNSHIP OF TEANECK, AND HERBERT AND BERNHARD PANZENHAGEN, t/a EXCELSIOR WINES & LIQUORS,)	
)	
Respondents.)	

Samuel Moskowitz, Esq., Attorney for Appellants.
Leland F. Ferry, Esq., Attorney for Reppondent Council.
William Genser, Esq., Attorney for Respondent-licensees.

BY THE DIRECTOR:

Appellants appealed from the action of respondent Township Council which, on December 6, 1960, approved an application for transfer of plenary retail distribution license D-13 from Herbert and Bernhard Panzenhagen, t/a Excelsior Wines & Liquors, to respondents Herbert and Bernhard Panzenhagen, t/a Super Excelsior Supermarket, and from premises 451 Cedar Lane to premises 492 Cedar Lane, Teaneck.

Prior to the hearing on the appeal, the following stipulation, signed by respondents Herbert and Bernhard Panzenhagen and the attorneys for the respective parties hereto, was submitted to me:

"WHEREAS, applicant-respondents had prevailed in Case #1, as above captioned, and had been subjected to the process of re-determination thereof, on the identical facts, circumstances, and conditions by reason of the intervention of license renewal time, and

"WHEREAS, any determination or adjudication in Case #2 herein, is subject to the same factors of challenge on appeal, by reason of the automatic progress of time, without regard to the hardships visited upon the applicant-respondents, or merit or validity of such challenge,

"NOW, THEREFORE, IT IS STIPULATED, by HERBERT PANZENHAGEN AND BERNHARD PANZENHAGEN t/a SUPER EXCELSIOR SUPERMARKET and EXCELSIOR WINE AND LIQUORS, that the application for transfer of plenary retail license from premises 451 Cedar Lane, Teaneck to premises 492 Cedar Lane, Teaneck is herewith abandoned."

In the prior appeal between the same parties the action of respondent Township Council on April 19, 1960, whereby it granted a similar application for transfer of their 1959-60 license was affirmed. However, when the conclusions and order therein were entered on November 1, 1960, said license had expired. See Bulletin 1369, Item 1. It appears that, while the former appeal was pending and undecided, respondent licensees obtained a renewal of their license for the 1960-61 licensing year for 451 Cedar Lane. In effect, therefore, they have now decided to continue to operate at said premises and to abandon their application to transfer to 492 Cedar Lane. Since the transfer never became effective, respondent Township Council should adopt a resolution rescinding its resolutions dated April 19, 1960, and December 6, 1960. Re Volcker, Bulletin 140, Item 9.

Accordingly, it is, on this 12th day of June 1961,

ORDERED that the within appeal be and the same is hereby dismissed, and respondent Township Council is directed to rescind its resolutions dated April 19, 1960, and December 6, 1960, whereby it granted applications for transfer of the license in question.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FALSE STATEMENT IN APPLICATION (AS TO PRIOR RECORD) - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 WOODLAND GROVE, INC.)
 t/a WOODLAND GROVE)
 Jernee Mill Road (Devoe Tract))
 Sayreville, New Jersey)
 Holder of Plenary Retail Consumption License C-35, issued by the Borough Council of the Borough of Sayreville.)

CONCLUSIONS AND ORDER

 Louis J. Milano, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Friday night April 7, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., John ---, age 18, Charles ---, age 18, Angus ---, age 19 and Fred ---, age 20 and allowed, permitted and suffered the consumption of alcoholic beverages by said John ---, Charles --- and Angus ---, in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.
- "2. In your application filed with the Borough Council of the Borough of Sayreville dated June 6, 1960, and upon which you obtained your current plenary retail consumption license you while stating 'Yes' in answer to Question No. 34 which asks: 'Have you or has any person mentioned in this application ever been convicted of any violation of the Alcoholic Beverage Law (R.S. Title 33) as amended and supplemented? ___ If so, state details as to each conviction, giving date and nature thereof and the court in which sentence was imposed.' and revealing therein two certain suspensions of licenses, one of which apparently was against a license held by your corporation for the above stated premises nevertheless failed to disclose the accurate and full details of any such convictions of the Alcoholic Beverage Law and you also falsely stated 'No' in answer to Question No. 41 which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled? ___ If so, state details with respect to each surrender, suspension, revocation or cancellation.', whereas in truth and fact plenary retail consumption licenses held by Matteo Valenti, named in your application as President, Director and Stockholder of your corporation for premises 500 Washington Street, South Amboy, N. J. had been suspended on three separate occasions for violations of the Alcoholic Beverage Law (R.S. Title 33) and State

Regulations; said false answers and statements and/or evasions and suppressions being in violation of R.S. 33:1-25."

On Friday, April 7, 1961, at about 10:40 p.m., ABC agents were at the within licensed premises. Four male minor musicians entertained the patrons at that time. At an intermission, these minors, later identified as Fred---, age 20, Angus ---, age 19, John----, age 18, and Charles ---, age 18, approached the patrons' side of the bar, and John and Charles then proceeded to a booth, where they joined other friends. James R. Scanlon, a bartender, sold a bottle of beer and a shot of whiskey to Angus, who seated himself in a nearby booth. Fred then purchased four bottles of Rolling Rock Beer which was served to him by the other bartender, Matteo Valenti (president, director and stockholder of the corporate-licensee). Fred then distributed some of the bottles to John and Charles.

The agents then made their identities known. At police headquarters, Angus admitted consuming a bottle of beer and whiskey which he claimed was purchased for him by an unknown patron. Charles admitted that a bottle of beer was in his hand when it was seized, but denied drinking the same. Fred denied that either he or his companions had been asked any questions regarding their ages by any of the employees of the corporate licensee.

An examination of the application resulted in the second charge herein. The facts underlying the violation are sufficiently set forth in the said charge to obviate the necessity of further elaboration.

Defendant has a prior adjudicated record. Effective January 26, 1960 its license was suspended by the Sayreville Borough Council for three days for allowing a brawl on its licensed premises. In addition, a plenary retail consumption license held individually by Matteo Valenti, president of the corporate licensee herein, for premises 500 Washington Street, South Amboy, New Jersey, was suspended by this Division for forty days, effective August 3, 1959 on five charges set forth in Re Valenti, Bulletin 1294, Item 1; effective October 1, 1957 his license was suspended by the South Amboy Common Council for thirty days for sales to minors; effective March 18, 1946 his license was suspended for ten days for sales to minors. Since the last suspension referred to occurred more than ten years prior to the date hereof, it will not be considered in the imposition of a penalty.

In alleged mitigation, Matteo Valenti (president and majority stockholder of defendant corporation) has submitted to me a written statement wherein he sets forth, among other things, that he is 76 year old and has only a limited knowledge of the English language; that he had no intention of misleading the issuing authority by setting forth false statements in the application and that, when furnishing the information upon which an attorney (not defendant's present attorney) prepared said application, he understood that the questions applied on to the Sayreville license and not to the license he formerly held in South Amboy. The record herein shows that Valenti was previously penalized for filing a false statement. I am not particularly impressed by his explanations but, in fixing penalty herein, I shall take into consideration his age and limited knowledge. I shall suspend defendant's license for twenty days on Charge 1 (Cf. Re Fox Jr., Bulletin 1345, Item 9); for fifteen days, under the circumstances of this case, on Charge 2, and for an additional fifteen days because of the prior dissimilar violation committed by defendant within the past five years and the prior record of the majority stockholder of defendant corporation. Five days will be remitted for the plea, leaving a net

suspension of forty-five days.

Accordingly, it is, on this 7th day of June, 1961,

ORDERED that Plenary Retail Consumption License C-35, issued by the Borough Council of the Borough of Sayreville to Woodland Grove, Inc., t/a Woodland Grove, for premises on Jernee Mill Road (Devoe Tract), Sayreville, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., Monday, June 19, 1961; and it is further

ORDERED that any renewal for the 1961-62 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., Thursday, August 3, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN DWELLING - ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 10,203
January 13, 1960 of 289 gallons)	
of wine and \$37.75 in cash at	)	ON HEARING
premises occupied by Manuel Alvarez	)	CONCLUSIONS
Torres, located at 325 First Street,	)	AND ORDER
in the City of Jersey City, County)	
of Hudson and State of New Jersey.)	

Max & Koenig, Esqs., by Jacob E. Max, Esq., Attorneys for claimant,
Manuel Alvarez Torres.

I. Edward Amada, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing, pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether a quantity of alcoholic beverages and \$37.75 in cash, more particularly described in a schedule annexed hereto, and marked 'Schedule A', seized on January 13, 1960 at premises occupied by Manuel Alvarez Torres, located at 325 First Street, Jersey City, constitute unlawful property and should be forfeited.

"The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the premises.

"When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Manuel Torres, who sought return of the aforementioned cash. Forfeiture of the alcoholic beverages was not opposed.

"The file herein which includes statements of ABC agents, a report of the analysis by the Division's chemist of the seized alcoholic beverages, was admitted into evidence, with the consent of counsel for the claimant and shows the following:

"Acting upon a specific complaint that alcoholic beverages were being sold without a license at the hereinafter described premises, the ABC agents, on January 6, 1960, proceeded to a two-story building behind the building at 325 First Street, Jersey City, N. J. Agent D was admitted by an elderly male, later identified as Manuel A. Torres, the claimant herein. Agent D then purchased a gallon jug of wine, for which he paid Torres \$3.00 and Torres then handed it to him in a paper bag.

"On January 13, 1960 at about 8:00 P.M. Agents D, S and D returned to the said premises and Agent D entered the premises and negotiated another purchase of a gallon of wine, paying \$3.00 with three one-dollar bills, the serial numbers of which had been previously recorded. As soon as Agent D left the premises, the ABC agents, together with local police officers, re-entered the premises and identified themselves. Torres was asked to surrender all monies on his person, which amounted to \$37.75, in which were included the three marked one-dollar bills. Torres was then placed under arrest, charged with selling alcoholic beverages without a license contrary to R.S. 33:1-2 and R.S. 33:1-50(a); owning, possessing, keeping and storing alcoholic beverages with the intent to sell the same without a license, on January 13, 1960 contrary to R.S. 33:1-2; for possessing, and having custody of illicit beverages, namely 289 gallons of home-made red wine bearing no indicia of tax payment on January 13, 1960 in violation of R.S. 33:1-50(e). Torres admitted at that time, that he owned part of the substantial quantity of wine then seized, but claimed the remainder of it belonged to Tripoli Restaurant, a business conducted in the front building.

"Manuel Alvarez Torres did not hold any license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose.

"The contents of one of the gallons of wine then seized were analyzed by the Division chemist, who reports that it is a red wine, fit for beverage purposes, with an alcoholic content by volume of 12.2 percent.

"Torres offered the following explanation and justification of his claim: He admitted selling the wine but states that the money that was seized was money that came from his salary, as an employee of the American Can Company, and that, although this was commingled with the three one-dollar marked bills, it was not money gained from the sale of illicit wine.

"This contention has been consistently rejected by the Division for the reasons set forth in Re Seizure Case No. 9771, Bulletin 1278, Item 7; Seizure Case No. 9653, Bulletin 1231, Item 8; Seizure Case No. 7480, Bulletin 857, Item 3.

"The contention of counsel that the money was improperly seized is without merit because this was seized during the course of the arrest of the claimant, Re Tricoli, Bulletin 164, Item 9, citing cases from the Federal Jurisdiction; Seizure Case No. 7480, supra.

"Counsel appears to be under the erroneous impression that since the claimant has been fined in criminal proceedings, that his client has been adequately punished, and the money should now be returned to him. It should be noted that these proceedings are not criminal in nature, but are merely in the nature of civil proceedings to determine whether seized property constitutes unlawful property and should be forfeited. Consequently, the penalty imposed in criminal court has no relation to the instant proceedings. Cf Kravis v. Hock, 137, N.J.L. 252 (Sup. Ct. 1948), Helvering vs. Mitchell, 303 U.S. 391, 82 L. ed. 917.

"The illicit wine, and the \$37.75 in cash seized therewith constitute unlawful property and is subject to forfeiture R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66. It appears therefore that forfeiture of the seized property must follow as of course, and I recommend an Order to that effect."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 8th day of June, 1961,

DETERMINED and ORDERED that the seized alcoholic beverages and the \$37.75 in cash, described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the discretion of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

289 - gallons of wine
\$37.75 in cash

5. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to
the Transfer of State Beverage
Distributor's License No. SBD-3
from

JOHN LUTZ,
t/a LUTZ BEVERAGE CO.
12 Ludlow Street
Jersey City, N. J.

to

ALEXANDER MACCIA, JR.
t/a GARDEN STATE BEER DEPOT
3 Hopper Avenue
Nutley, N. J.

CONCLUSIONS

Michael J. Kosloski, Esq., Attorney for Applicant Alexander Maccia, Jr.
John W. Yengo, Esq., Attorney for John Lutz, Transferor
William F. Gorman, Esq., Attorney for Objector, Board of Commissioners
of the Town of Nutley
Martin G. Bross, Jr., Esq., Attorney for Individual Objectors
Leonard Brass, Esq., Attorney for Objector Essex County Retail
Liquor Stores Association
Albert Waring, Objector

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Written objections to the application for transfer having been filed by various objectors, a hearing was duly held thereon.

"It appears from the file herein that the Board of Commissioners of the Town of Nutley filed with the Director a written objection to

the granting of said application and attached thereto a copy of a resolution adopted by the Board on April 5, 1961, the pertinent portion of which is as follows:

'WHEREAS our Zoning Ordinance prohibits wholesale business in the district in which 3 Hopper Avenue, Nutley, N. J. is located,

'THEREFORE be it Resolved that the Board of Commissioners of the Town of Nutley, N. J., do hereby object to the issuance of this permit by the Director of Alcoholic Beverage Control.'

"It further appears from the file that written objections to the application for transfer were filed with the Director by eight individuals who reside near the proposed premises, by various retail licensees in Nutley, and by the Essex County Retail Liquor Stores Association. In general, these objections allege that there is no need for an additional liquor license in Nutley and that the transfer of the license would adversely affect the properties or the businesses of the objectors.

"At the hearing herein the applicant (Alexander Maccia, Jr.) testified that he has rented the property known as 3 Hopper Avenue, Nutley. It appears that said property has a frontage of 100 feet on Hopper Avenue and a frontage of 40 feet on Bloomfield Avenue; that there is a one-story concrete building about 45 feet wide and 40 feet deep on said plot, and that the balance of the plot is used for parking. Applicant testified that he has one truck and intends to sell beer and soda to homes anywhere in New Jersey, and to persons who come to the premises. In his direct examination he stated that he intends to limit his business to sales to consumers, but on cross-examination he stated that he may later sell to retail licensees. He admitted that he will not take over any accounts from John Lutz, who has not been conducting any business under the license since October 1960.

"On behalf of applicant, the owner of the property at 3 Hopper Avenue testified that the building was used as a machine shop for ten years; that it has been vacant for seven months, and that he has leased the premises to the applicant for three years.

"On behalf of the objectors, the attorney for the Board of Commissioners introduced into evidence a copy of the zoning ordinance of Nutley. The property known as 3 Hopper Avenue is located in a B-2 Zoning District. Wholesale businesses are not permitted in a B-2 Zoning District. Retail businesses are permitted as follows:

- '4. Retail shops servicing the neighboring residences for the sale of items such as drugs, confectionery, stationery, fruit, vegetables, meat, groceries, hardware; and bakeries limited to retail sales on the premises; and service establishments; provided any such use does not constitute a nuisance by reason of noise, odor or steam to abutting residences. No loading, crating, outdoor display and/or sales on sidewalk is permitted.'

"From the testimony of the other objectors it appears that the Town of Nutley has a population, according to the 1960 Federal census, of 29,576 and that twenty-three plenary retail consumption and five plenary retail distribution licenses have been issued in the Town.

"After reviewing the evidence and exhibits herein, I conclude that it is unnecessary to determine whether the retail sale of alcoholic beverages at the proposed premises is permissible under the zoning ordinance. In any event, this is a wholesale license and the objection by the Board of Commissioners should be considered. Re Bakunas, Bulletin 1176, Item 4. The objections by the retail liquor licensees carry little weight because State Beverage Distributor licensees may deliver throughout the State and, as a rule, do not conduct a retail business (over the counter) of any substance. Re Walkiewicz, Bulletin 1172, Item 5. Nevertheless, the transfer of a license, whether State or municipal, to other premises is not a privilege inherent in a license. Re Variety Beer & Soda Distributors, Inc., Bulletin 1000, Item 6. In this case applicant seeks to transfer the license from a location in Jersey City and to establish what is essentially a new liquor business in Nutley. Considering all the facts in this case, it is recommended that the application for transfer be denied. Re Bakunas, Bulletin 1055, Item 9; Re Shaiman, Bulletin 1062, Item 2; Re Saxon Distributing Co., Bulletin 1237, Item 7; Re Jiannantino, Bulletin 1246, Item 9."

No exceptions to the Hearer's Report were filed with me.

After carefully considering the entire record, including the transcript of testimony, exhibits and Hearer's Report, I concur in and adopt the Hearer's findings and conclusions as my conclusions herein and, hence, I deny the application for the transfer of the license in question.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: June 6, 1961

- 6. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED FOR SALE OF ILLICIT ALCOHOLIC BEVERAGES - CASH NOT COMMINGLED ORDERED RETURNED - LIEN CLAIM DISALLOWED - ALCOHOLIC BEVERAGES AND AUTO* MOBILE ORDERED FORFEITED.

In the Matter of the Seizure on November 5, 1960 of a quantity of taxpaid whiskey, a Renault Dauphine sedan and \$72.67 in cash on the southwest corner of Sewall Avenue and Main Street, in the City of Asbury Park, County of Monmouth and State of New Jersey.	)	CASE NO. 10,450
	)	ON HEARING
	)	CONCLUSIONS
	)	AND ORDER

Seymour Kobetz, Esq., Attorney for the claimants, Philip P. Silverstein and Seymour Silverstein.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$72.67 in cash, and a Renault Dauphine sedan, described in a schedule attached hereto, and marked 'Schedule A', seized on November 5, 1960 at the southwest corner of Sewall Avenue and Main Street, Asbury Park, N.J., constitute unlawful property and should be forfeited.

"When the matter came on for hearing, pursuant to R.S. 33:1-66, Philip P. Silverstein, the registered owner of the Renault Dauphine sedan appeared, and sought both the return of the motor vehicle and

the cash. An appearance was also entered on behalf of Seymour Silverstein, a brother of Philip P. Silverstein, who sought recognition of his alleged lien on said motor vehicle. It was stipulated by Philip Silverstein that if such lien is recognized, his request for return of the vehicle shall be considered withdrawn.

"Seymour Silverstein was represented by counsel on the date of the first hearing, but he himself did not appear. A continued hearing date was set in order to permit this claimant to appear personally, and produce additional evidence with respect to his claim. At the continued hearing, Seymour Silverstein stated that he did not desire to be represented by counsel, and that his counsel had withdrawn from the case. He was permitted to introduce such additional evidence on his own behalf, without legal representation.

"It was stipulated that the file of this Division, including the affidavit of mailing and the affidavit of publication, would be admitted into evidence. Reports of ABC agents and other documents in the file disclose that on November 5, 1960 at about 6:30 P.M., ABC agents observed Philip Silverstein park his motor vehicle in the vicinity of an automobile showroom, at the corner of Sewall Avenue and Main Street, Asbury Park. The automobile bore New Jersey license plates and did not have a transit insignia affixed to it. The agents observed Silverstein take a quantity of whiskey from the trunk of a motor vehicle, and sell the same, on the street, to a man (later identified as Richard Jenkins), from which he accepted three one-dollar bills. Within a few minutes, and under similar circumstances, the agents observed Silverstein sell two bottles of whiskey to an agent of this Division, who then paid for the same with dollar bills, the serial numbers of which had been previously recorded. The ABC agents then revealed their identity to Silverstein, in whose possession they found the marked money and an additional sum of \$72.67. They also seized the alcoholic beverages, which were in the trunk of the car, and the motor vehicle.

"The records of this Division disclose that no transit insignia had been issued for the automobile in question.

"The reports further indicate that Philip Silverstein is employed as a liquor salesman, and obtained the aforesaid alcoholic beverages by 'wash' sales from retail licensees, and direct purchases from his employer, Dorchester, Inc., a wholesale distributor.

"The records of this Division disclose that on March 13, 1961 Philip Silverstein pleaded non vult to four disciplinary charges based upon the facts herein, covering divers dates between January 30, 1959 and November 5, 1960, and his solicitor's permit issued by the State Director was suspended for 180 days, effective April 19, 1961, on the said charges. (Re Silverstein, Bulletin 1390, Item 1.)

"Philip Silverstein admitted, at the hearing, that he had received payment for the whiskey as stated by the agents, and, in his previously signed sworn statement, admitted that he had theretofore sold alcoholic beverages in this manner. He also admitted that he did not hold any license authorizing him to sell alcoholic beverages; in any event, it is unlawful, even for a licensee, to sell alcoholic beverages from an unauthorized motor vehicle parked on the highway, Seizure Case No. 9576, Bulletin 1212, Item 3. The seized whiskey is illicit because it was intended for unlawful sale, R.S. 33:1-1(i). Such illicit whiskey, the seized cash, and the motor vehicle in which said whiskey was found, constitute unlawful property, and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

"Silverstein further testified that the \$72.67 was actually money which he had received from his employment, and was the balance

after he gave his wife moneys for weekend household purchases. He stated that he earns \$125.00 a week and that he had this money in a wallet in his pocket. However, the testimony shows that all of the money was kept in one pocket commingled with the money received from the sale of these beverages on that day.

"By the clear language of the statute, all personal property of whatever nature found on his person or in the motor vehicle constitutes unlawful property and is subject to forfeiture. Seizure Case No. 10,349, Bulletin 1278, Item 8. This would apply to the cash, the alcoholic beverages and to the motor vehicle in which these alcoholic beverages were transported, and from which they were sold. Seizure Case No. 10,375, Bulletin 1369, Item 6; Seizure Case No. 10,354, Bulletin 1364, Item 3; R.S. 33:1-1(y); R.S. 33:1-2, R.S. 33:1-66. I therefore recommend that the cash, the alcoholic beverages, and the motor vehicle seized therein, shall be forfeited.

"Seymour Silverstein has presented in evidence a note dated August 26, 1960 in the sum of \$850.00 'plus $\frac{1}{2}$ % per month until the entire amount is repaid' purporting to represent a loan made by him to his brother. The note is notarized by another brother, but the signature of the notary appears obliterated on this photostatic copy. This alleged lien was not recorded. The note does not indicate the terms or the method of repayment but contains the following legend; 'collateral for the loan is my car 1959 Renault four-door sedan encumbrance held by Seymour Silverstein, Neptune, N.J., appears on the certificate of ownership dated August 26, 1960, the certificate number is 663287'.

"Philip Silverstein, the owner of the motor vehicle in question, testified that he borrowed this money on August 26 for the express purpose of purchasing the said motor vehicle, and used this money together with a 1955 Chevrolet automobile and a Mercury in payment for the Renault. He states further that there was a balance due to the Eastern Finance Company on the Mercury of approximately \$500.00 which he liquidated by payment. He further testified that the retail sales price for the Renault was approximately \$1300.00. He then offered into evidence the official used car guide published by the National Automobile Dealers Used Car Guide Co. dated March 1961 to support his statement that the Renault 1959 Dauphine sedan has an average retail value of \$815, so that the outstanding lien would be greater than the present retail value of the said automobile. He stated further that the loan was specifically predicated upon his promise to make repayment in the sum of \$100.00 a month, commencing six months after the date of the loan. However, no repayments have been made thereon, as of the date of the hearing. Because I felt that there was insufficient evidence to sustain the legitimacy and validity of this lien claim, I invited the lien claimant, Seymour Silverstein, to appear at a supplemental hearing, and give additional testimony thereon. He stated that he did, in fact, loan \$850.00 to his brother because his brother needed an automobile in order to earn a livelihood. 'He needed the money badly and he needed the car badly.' He further stated that there was no understanding as to repayment except that his brother would repay him as soon as he found he was able to do so. He further stated that the \$850.00 came from one of the four or five bank accounts that he had, and some cash that was lying around the house. This was amended later in the testimony to the effect that part of this cash might have been from his paycheck, and the balance was represented by a bank account withdrawal. He was asked, on cross-examination, to explain, if he could, his brother's need for a car since he already had two cars. He disclaimed any knowledge of the fact that his brother owned any motor vehicles, but thought this loan would enable his brother to buy a new car, which would be a 'definite asset for him to earn more money'.

"At my request the owner of the motor vehicle produced for my inspection a statement of his bank account for the months of August and September 1960. This statement reflects a deposit of \$448.61 on August 26, 1960 and includes a check made payable to the Eastern Acceptance Corporation dated August 26, 1960 in the sum of \$277.23. A check in the sum of \$100.00 to the Cavalier Motors, Inc. is dated August 25, 1960, which is prior to the date on which this alleged loan was obtained, which Philip Silverstein testified was used to make this payment on account of the purchase of the motor vehicle in question. There is no evidence of any deposit made in the sum of \$850.00 as was heretofore testified to. In view of the fact that Philip Silverstein had made a total of 157 unlawful sales amounting to a total of \$30,942.02 between January 30, 1959 and November 5, 1960 (Re Silverstein, supra), it taxes one's credulity to believe that he received a loan from his brother on the date, and under the circumstances as herein set forth.

"It is difficult to understand how this alleged lienor, who is the brother of the motor vehicle owner, did not know that his brother was the owner of two vehicles at the time of the alleged loan, and made no effort to ascertain the true activities of his brother. The Director has the discretionary authority to recognize the bona fide and valid property rights of innocent lienors who have acted in good faith, and without knowledge of or reason to suspect the illegal activity with which such property was convicted. R.S. 33:1-66; Seizure Case No. 5678, Bulletin 401, Item 7. See also Seizure Case No. 5802, Bulletin 433, Item 3; Seizure Case No. 7303, Bulletin 822, Item 1; Seizure Case No. 8858, Bulletin 1080, Item 10.

"The conflicting and contradictory testimony and the circumstances relating to this alleged loan leads one to the conclusions that there is not sufficient credible evidence to establish a bona fide, valid claim asserted by Seymour Silverstein. I therefore recommend that this claim be denied."

No exceptions to the Hearer's Report were filed within the time limited by Rule 4 of State Regulation No. 28.

I have carefully considered the facts and circumstances appearing herein and agree with the Hearer's findings and conclusions as expressed in his Report except as hereinafter set forth. I shall modify the Report to the extent that \$72.67 will be returned to the claimant, Philip P. Silverstein. According to claimant's testimony, this sum was part of his salary received on the previous day. This money, exclusive of the change, was found in a money clip in his pocket, and was not commingled with the \$10.00 in "marked" bills found in his possession. I, therefore, shall give the claimant the benefit of the doubt and shall order the said sum of \$72.67 returned to him.

Accordingly, it is, on this 28th day of June, 1961,

DETERMINED and ORDERED that the said sum of \$72.67 shall be returned to Philip P. Silverstein; and it is further

DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29, or retained for the use of hospitals and state, county and municipal institutions, or destroyed

in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 18 - 4/5 quart bottles of various brands of alcoholic beverages
- 1 - Renault Dauphine, Serial No. 5275235, New Jersey Registration AML-395.

7. DISCIPLINARY PROCEEDINGS - SALE BY RETAILER TO RETAILER - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SAUL Z. STEINWEISS)
t/a TOWNE PHARMACY)
1 Sheridan Avenue)
Hohokus, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Borough Council of the Borough of Hohokus.)

Lawrence Diamond, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to the following charge:

"On May 2, 1961, you, holder of a New Jersey plenary retail distribution license, without authority of special permit first obtained from the Division of Alcoholic Beverage Control, sold twenty-five cases of various kinds and brands of alcoholic beverages to Four Hundred-21st Avenue, Inc., t/a Bookstaber's Drug Store, holder of a plenary retail distribution license for premises 400 - 21st Avenue, Paterson, New Jersey; in violation of Rule 15 of State Regulation No. 20."

The investigation of this case disclosed that on May 2, 1961 the defendant, without first obtaining a special permit from this Division, sold twenty-five cases of assorted brands of whiskey to the Four Hundred-21st Avenue, Inc., another retail licensee.

By way of mitigation, the attorney for the defendant has submitted a statement setting forth therein, among other things, that the aforesaid sale of alcoholic beverages was made to accommodate a friend in distress; that the defendant was an innocent bystander in the transaction; that he had nothing to gain therefrom and that he did not intentionally attempt to circumvent the rules and regulations of the Division. However, it is the duty of every licensee to strictly adhere to the rules and regulations of the Division at all times.

Defendant has no prior adjudicated record. Considering the large amount of alcoholic beverages involved, I shall suspend the defendant's license for twenty days. Cf. Re Mansueto, Inc., Bulletin 1308, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 27th day of June 1961,

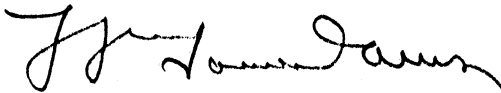
ORDERED that any renewal for the 1961-62 licensing year or transfer of Plenary Retail Distribution License D-5, issued by the Borough Council of the Borough of Hohokus to Saul Z. Steinweiss, t/a Towne Pharmacy, for premises 1 Sheridan Avenue, Hohokus, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m., Wednesday, July 5, 1961 and terminating at 9:00 a.m., Thursday, July 20, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

Alta Vineyards Company
t/a Garrett & Company and B. Cribari & Sons
P.O. Box 1111, Fresno, California
9 West Prospect Avenue
Mount Vernon, New York
Application filed August 14, 1961 for
Wine Wholesale License.

Delsea Distributing Co.
W/S South Delsea Drive, 100 Feet
South of Garrison Road
Vineland, New Jersey
Application filed August 14, 1961 for
person-to-person, place-to-place
transfer of State Beverage Distributor's
License SBD-86 from Joseph Buglio, t/a
Buglio Distributing Company, 14 Front Street,
Salem, New Jersey.


William Howe Davis
Director